

June 20, 2012

Ms. Marlene H. Dortch Secretary Federal Communications Commission 445 Twelfth Street, SW Washington, DC 20554

Re: Applications of Cellco Partnership d/b/a Verizon Wireless, SpectrumCo LLC, and Cox TMI Wireless, LLC, WT Docket No. 12-4
Notice of *Ex Parte* Meeting

Dear Ms. Dortch,

On June 19, 2012, Harold Feld, Senior Vice President; Jodie Griffin, Staff Attorney; and Gregory Capobianco, Legal Intern, of Public Knowledge ("PK") met with Commissioner Rosenworcel and Paul Murray to discuss the proposed license transfers and commercial agreements between Verizon Wireless, SpectrumCo, LLC, and Cox TMI Wireless.

During the meeting PK expressed concern that the proposed license transfer and commercial agreements would harm the public interest. Our presentation focused on the spectrum screen, "use it or share it" spectrum conditions, Wi-Fi offload, and other provisions of the joint marketing, reseller, and Joint Operating Entity ("JOE") agreements.

PK urged the FCC to reject Verizon's claims that the spectrum screen is a safe harbor that prevents the Commission from addressing the competitive harms posed by proposed spectrum transfers. As PK has explained before, the spectrum screen is a policy tool, not a cap, and the FCC is free to recognize and prevent public interest harms that flow from transactions that do not result in spectrum holdings that exceed the screen. To the extent that the FCC is utilizing the spectrum screen as a tool in its analysis of the proposed transactions, PK urged the FCC to first resolve the Public Interest Spectrum Coalition's ("PISC") 2008 Petition for Reconsideration regarding the spectrum screen alterations from the Verizon/AllTel transaction. If the FCC grants the PISC Petition, Verizon, which was a party to the Verizon/AllTel proceeding and therefore has ample notice of the pending Petition, would be over the spectrum screen in a number of markets.

PK recommended that the Commission hold this proceeding in abeyance until a

¹ Letter from John Bergmayer, Senior Staff Attorney, Public Knowledge, to Marlene Dortch, Secretary, FCC, WT Docket No. 12-4 (Mar. 27, 2012).

² See Petition for Reconsideration of the Public Interest Spectrum Coalition, WT Docket 08-95 (filed Dec. 10, 2008).



determination is made regarding the Petition. Alternatively, PK urged the Commission to properly treat the spectrum screen as a policy tool, which would allow the Commission to act immediately to protect the public interest in this proceeding. If the Commission revisits the spectrum screen, PK urged the Commission to remove BRS spectrum from the screen, reducing the maximum spectrum a licensee is allowed to hold to 95 MHz—the level prior to the Verizon/AllTel transaction. PK also noted that the FCC has authority—which it has exercised in the past—to require the divestiture of spectrum even when there is no change in the market share of the Applicant.³

Although PK concludes that the proposed transactions must be blocked as contrary to the public interest, if the FCC decides to approve the transaction, the FCC should only give its approval on condition of a "use it or share it" spectrum obligation. Under this condition, unused spectrum would be included in the white spaces database for use by white spaces devices. This condition would impose no cost on Verizon but would encourage efficiency by permitting other devices to use spectrum that would otherwise have gone unused. This condition would also give device manufacturers advance notice that the spectrum may become available so they can make appropriate adjustments in the next generation of their equipment. More generally, a "use it or share it" provision would send a signal to developers that it will be worthwhile to continue investing in white spaces technology because the FCC will be using the white spaces database as a tool to encourage innovation.

PK explained how increasing the spectrum available in the white spaces database through a "use it or share it" condition would encourage a more efficient, robust market in mobile services and devices. PK explained that the database would be dynamic – with spectrum easily removed from the database once Verizon has begun using it – suitable for device manufacturers to create white spaces devices that could access the currently unused spectrum without leaving the licensee any worse off. Such a system would enable both wireless internet service providers and commercial mobile radio service providers to use spectrum currently unavailable to them, particularly in rural markets that receive less wireless service and for smaller carriers seeking to avoid costly roaming agreements.

We also expressed our concern that the Applicants' related joint marketing, reseller, and Joint Operating Entity agreements will prevent or discourage competitors to Verizon Wireless from using the Wi-Fi capacity of the Applicant cable operators. This will cripple the development and usefulness of Wi-Fi networks, which, absent the availability of additional spectrum, is the most likely opportunity to create greater competition in the wireless industry. Without the agreements at issue, the cable operators would presumably be willing to enter into Wi-Fi offload agreements with wireless carriers like Pioneer, or to partner with companies like Netflix that may be interested in pursuing new avenues to transmit their services to consumers. But under the joint agreements, the Applicants would be unlikely to ever enter into partnerships to offer these promising services.⁴

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³ See Memorandum Opinion and Order, WT Docket 08-26 (filed Feb. 4, 2008).

⁴ Public Knowledge's pending Challenge to Confidentiality Designation, if granted, would permit the public to more fully understand the motivations of the Applicants in entering the



PK argued that, if the Commission approves the proposed transactions, the Commission should prohibit Verizon from interfering in any way with the cable operators' Wi-Fi offload projects or partnerships. This would help to protect the potential benefits of Wi-Fi offload for the efficient provision of wireless services. PK noted that this condition could be fashioned as a condition on Verizon Wireless as the proposed licensee in this proceeding.

PK noted that the JOE and its related agreements could also impede the development of Wi-Fi offload through the anticompetitive use of patents necessary for the development of Wi-Fi offload services. PK noted that the Commission has previously addressed the potential anticompetitive use of patents in the OCAP and CableCARD proceedings.

Finally, PK expressed general agreement with Free Press's arguments explaining the public interest harms flowing from the proposed spectrum transfers.⁵

Sincerely,

/s/

Harold Feld

Senior Vice President

Public Knowledge

commercial agreements and to consider the potential consequences of the agreements. *See* Challenge to Confidentiality Designation of Public Knowledge, WT Docket No. 12-4 (filed May 9, 2012). Public Knowledge also noted that the continued redactions in the highly confidential versions of the commercial agreements impede parties' ability to fully understand the Applicants' contractual incentives and the relationships between the agreements—even if their outside counsel can recognize the potential problems. As a result, public review and discourse in this proceeding suffers.

⁵ See Letter from Parul Desai, Consumers Union, Derek Turner, Free Press, Michael Calabrese, New America Foundation's Open Technology Institute, Harold Feld, Public Knowledge, to Marlene Dortch, FCC, WT Docket No. 12-4 (June 14, 2012). See also Free Press Reply to Opposition, WT Docket 12-4 (filed Mar. 26, 2012); Free Press Petition to Deny, WT Docket 12-4 (filed Feb. 21, 2012).